

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**DONNA J. HILL,
On Behalf of Herself and All Others Similarly
Situating or, Alternatively, on Behalf of the New
Mexico Educational Retirement Fund and its
Members and Beneficiaries,**

Plaintiff,

v.

No. _____

**VANDERBILT CAPITAL ADVISORS, LLC,
VANDERBILT FINANCIAL, LLC, VANDERBILT
FINANCIAL TRUST, PIONEER INVESTMENT
MANAGEMENT U.S.A., INC., BRUCE MALOTT,
GARY BLAND, VERONICA GARCIA, DOUGLAS
M. BROWN, PATRICK A LIVNEY, OSBERT M.
HOOD, STEPHEN C. BERNHARDT, KURT W.
FLORIAN, JR., ANTHONY J. KOENIG, JR.,
MARK E. BRADLEY, RON D. KESSINGER,
ROBERT P. NAULT, JAMES R. STERN, NEW
ENGLAND PENSION CONSULTANTS, LLC,
ALDUS EQUITY, SAUL MEYER, JOHN DOE #1,
JOHN DOE #2, and DOES 3-100, inclusive,**

Defendants,

and

**THE NEW MEXICO EDUCATIONAL
RETIREMENT FUND,**

Nominal Defendant.

NOTICE OF REMOVAL

Defendant Veronica Garcia, Secretary of the New Mexico Public Education Department,
through her undersigned counsel states:

1. Pursuant to 28 U.S.C. §§ 1441, 1443, 1453(b) and 1446, Defendant Garcia herein
exercises her right, with the consent of all served Defendants, to remove this action from the

First Judicial District, County of Santa Fe, State of New Mexico, where the case is now pending by the name and style of *Donna J. Hill v. Vanderbilt Capital Advisors, LLC, et al.*, First Judicial District Court No. D-101-CV-201000060. Plaintiff's action arises, in part, out of alleged violations of the Fifth and Fourteenth Amendments to the United States Constitution and purports to be a class action as defined by 28 U.S.C. § 1453.

2. This Court has original jurisdiction as provided in 28 U.S.C. § 1331 in that the cause arises under the United States Constitution.

3. This Court has original jurisdiction as provided in 28 U.S.C. § 1332(d)(2) as the cause purports to be a class action claim.

4. On February 5, 2010, Plaintiff served Defendant Garcia. On January 14, 2010, Plaintiff served Defendant, Pioneer Investment Management U.S.A., Inc ("Pioneer"). On information and belief, Pioneer was the first Defendant served in this matter. As of February 12, 2010, no service on the Defendant Educational Retirement Board Trustee Defendants, including Secretary Garcia, Bruce Malott, Gary Bland and Douglas M. Brown has been perfected. As of this date, Plaintiff has served Defendants Vanderbilt Capital Advisors¹, Patrick A. Livney, Osbert M. Hood, Stephen C. Bernhardt, Kurt W. Florian, Jr., Anthony Koenig, Jr., Mark E. Bradley, Ron D. Kessinger, Robert P. Nault, James R. Stern, and New England Pension Consultants, LLC.

5. On information and belief, Aldus Equity has been served, though the date of service is unknown. It is also unknown whether service on Aldus Equity was proper pursuant to applicable rules.

¹ Vanderbilt Financial, LLC and Vanderbilt Financial Trust are entities which no longer exist as they have been dissolved.

6. This notice of removal is filed within 30 days of incomplete service² on Defendant Garcia, in accordance with the requirements of 28 U.S.C. § 1446 and within 30 days of service on the first served Defendant, Pioneer.

7. Pursuant to the provisions of 28 U.S.C. § 1446, Defendant attaches and incorporates by reference copies of the following pleadings filed in this action:

- a. Complaint for Damages (Exhibit A);
- b. Summons issued to Defendant Veronica Garcia (Exhibit B).

8. Defendant Garcia and the other served Defendants who have consented below, desire and are entitled to have this cause removed from the First Judicial District, County of Santa Fe, State of New Mexico. Defendant Garcia does not waive any jurisdictional or other defense she may be entitled to by filing this Notice of Removal.

9. Written notice of the filing of this Notice is being sent contemporaneously to counsel for Plaintiff as required by law.

10. A true and accurate copy of this notice will be filed with the clerk of the First Judicial District Court, County of Santa Fe, State of New Mexico, as provide by law.

WHEREFORE, Defendant Garcia prays that this action be removed to Federal Court, that this Court accept jurisdiction and that the action be placed on the docket of this Court for further proceedings, the same as though this action had been initiated in this Court.

Respectfully submitted,

HINKLE, HENSLEY, SHANOR & MARTIN, LLP

/s/ Ellen S. Casey
Jaclyn M. McLean

² New Mexico Rule of Civil Procedure 1-004(H)(c) requires that service may only be perfected on a state official by personal service on the state official and on the Attorney General.

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Counsel for Secretary Veronica Garcia

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February 2010, I caused a true and correct copy of the foregoing ***Notice of Removal*** to be filed electronically through the CM/ECF system, and mailed by first class mail to the following parties or counsel:

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